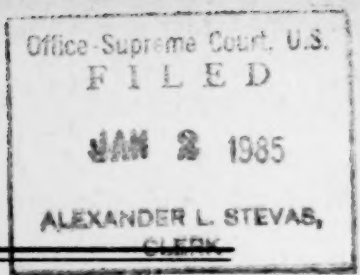


(2)
No. 84-682



In the Supreme Court of the United States

OCTOBER TERM, 1984

HELEN T. MONAGLE, PETITIONER

v.

WILLIAM F. BOLGER, POSTMASTER GENERAL
OF THE UNITED STATES

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT*

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioner contends that the court of appeals erred in denying her petition for a writ of mandamus to compel the district court to order her case set for trial.

1. Petitioner is a 61-year-old woman who holds an EAS-11 position as a safety technician with the Postal Service in Boston. This position, which she has held since 1978, is an "upward mobility position" from which an employee may seek further advancement. Petitioner applied for an EAS-14 position as a Safety Specialist in the same office. This position was awarded to a white male from a different postal office. Pet. 7-9.

On November 25, 1980, petitioner filed this suit alleging violations of the Age Discrimination in Employment Act of 1967, 42 U.S.C. 623(a), and Title VII of the Civil Rights Act

of 1964, 42 U.S.C. 2000e-16. As petitioner notes (Pet. 12), she has amended her complaint four times to include additional allegations.

The progress of the case was marked by repeated discovery requests on both sides and a variety of discovery motions filed by petitioner and respondent. On December 28, 1982, the parties filed a joint motion for extension of time to February 10, 1983, in which to complete discovery. Discovery in fact continued far past this date. Petitioner filed her fifth set of interrogatories and document requests on May 2, 1983, and moved to compel document production on August 25, 1983. Several status conferences were held by the district court and various trial dates were set, the most recent for September 27, 1983. No trial has yet been held, however. Over the course of the case petitioner has been represented by several different attorneys and is now proceeding pro se.

On May 17, 1984, petitioner filed a petition for a writ of mandamus with the First Circuit. The primary relief sought in the writ appears to be an order permitting petitioner to amend her complaint (Pet. App. 4g), although that issue is not raised in the petition for certiorari. Petitioner also requested that a trial date be set (*ibid.*). The First Circuit denied the writ without opinion (Pet. App. 1).

2. Petitioner's claim plainly does not warrant review by this Court. Petitioner has offered no ground whatsoever for concluding that the court of appeals abused its discretion in denying the extraordinary writ.

This Court summarized the principles governing issuance of a writ of mandamus in *Kerr v. United States District Court*, 426 U.S. 394 (1976). The Court noted that "[t]he remedy of mandamus is a drastic one, to be invoked only in extraordinary situations," and observed that "the writ 'has traditionally been used in the federal courts only 'to confine

an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so” ’ ” (*id.* at 402, quoting *Will v. United States*, 389 U.S. 90, 95 (1967), quoting *Roche v. Evaporated Milk Ass’n*, 319 U.S. 21, 26 (1943)). Its treatment of mandamus was founded, the Court stated, upon the interest in avoiding piecemeal litigation and upon the interest in avoiding “the unfortunate consequence of making the [district court] judge a litigant” (*Kerr v. United States District Court*, 426 U.S. at 402, quoting *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 384 (1953), quoting *Ex parte Fahey*, 332 U.S. 258, 260 (1947)). While the use of mandamus should not be restricted in an unduly narrow fashion, the Court declared that “the fact still remains that ‘only exceptional circumstances amounting to a judicial “usurpation of power” will justify the invocation of this extraordinary remedy’ ” (*Kerr v. United States District Court*, 426 U.S. at 402, quoting *Will v. United States*, 389 U.S. at 95). The Court further observed that “it is important to remember that issuance of the writ is in large part a matter of discretion with the court to which the petition is addressed” (*Kerr v. United States District Court*, 426 U.S. at 403; accord *Schlagenhauf v. Holder*, 379 U.S. 104, 112 n.8 (1964)).

Petitioner has offered no basis for concluding that the court of appeals abused its discretion in denying her petition. Nothing suggests that the district court has been derelict in its treatment of petitioner’s case or that it has failed to perform its proper functions. While petitioner’s desire to hasten the judicial process may be understandable, at least part of the time consumed by this case may be attributed to petitioner’s repeated amendments to her complaint, the discovery she has sought, and her changes of counsel. The mere desire for an earlier trial date does not warrant mandamus relief, particularly where petitioner’s own conduct has contributed to the delays.

Petitioner also suggests (Pet. 12) that the court of appeals should have ordered the district court to grant the ultimate relief sought. No basis exists for granting such relief pursuant to a writ of mandamus.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

JANUARY 1985

